

## News Release

U.S. Sentencing Commission  
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### **U.S. SENTENCING COMMISSION VOTES TO SEND TO CONGRESS GUIDELINE AMENDMENTS PROVIDING MORE ALTERNATIVES TO INCARCERATION, INCREASING CONSIDERATION OF CERTAIN SPECIFIC OFFENDER CHARACTERISTICS DURING THE SENTENCING PROCESS**

WASHINGTON, D.C. — The United States Sentencing Commission voted to promulgate sentencing guideline amendments that expand the availability of alternatives to incarceration and address the relevance of certain specific offender characteristics in sentencing. The Commission also voted to promulgate guideline amendments on additional topics including hate crimes, the calculation of a defendant's criminal history, and sentencing corporate offenders.

The amendment on sentencing alternatives has several key components. First it informs courts that departures from the guidelines may be warranted in situations where an offender's criminal activity is related to a treatment issue such as drug or alcohol abuse or significant mental illness and sentencing options such as home or community confinement or intermittent confinement would serve a specific treatment purpose. The Commission also recommends in a new application note that courts take into consideration the effectiveness of residential treatment programs as part of their decision to impose community confinement. Second, the Commission voted to increase the availability of alternative sentencing options by expanding by one offense level Zones B and C in the guidelines' sentencing table. According to the guidelines, offenders in Zones B and C are eligible, in the court's discretion and subject to statutory limitations, for alternatives to straight imprisonment such as split sentences, home or community confinement.

"The Commission has heard from virtually every sector of the criminal justice community that there is a great need for alternatives to incarceration," said Chair of the Commission, William K. Sessions III. "Expanding the availability of alternatives to straight incarceration is a public safety issue. Providing flexibility in sentencing for certain low-level, non violent offenders helps lower recidivism, is cost effective, and protects the public. The Commission's action in this area amounts to a very modest but important step in the right direction."

The Commission also voted to amend guideline policy statements regarding age, mental and emotional conditions, physical condition, and military service recognizing that these factors may be relevant to the sentencing process courts undertake. Previously, these factors were deemed as "not ordinarily relevant" in determining whether a sentence outside the guidelines was warranted. The amended policy statement provides that these factors may be relevant if they are relevant to an unusual degree and distinguish the case from the typical case. This amendment reflects the Commission's extensive review of offender characteristics that included reviewing case law and relevant literature, receiving public comment and hearing testimony, and conducting extensive data analyses.

"Through this amendment, the Commission is providing the criminal justice system, and particularly judges, with the information they have long sought," commented Chair Sessions. "The more information we can provide on the use of specific offender characteristics during the sentencing process, the more consistency and uniformity will result and the more justice will be served."

The Commission also voted to change the way courts compute an offender's criminal history under the guidelines. Criminal history is one of the most-cited reasons courts give for imposing sentences that are outside the otherwise applicable guideline range and not at the request of the government. After a detailed analysis, review of public comment, and other examinations, the Commission decided to delete the "recency" provision of the criminal history computation, in part, because when combined with other guideline calculations for

firearms or unlawful entry (immigration) offenses, the addition of recency "points" may result in a single criminal history event having excessive weight in the determination of the applicable guideline range. The Commission further determined that deletion of the provision did not detract from the overall ability of the criminal history score (resulting from the guidelines calculation) to predict an offender's likelihood of recidivism. "In short, this amendment reflects exactly how Congress expected the Commission to act under the Sentencing Reform Act," said Chair Sessions. "We listened to the criminal justice community, heard that this guideline provision did not promote the purposes of sentencing and, in fact, had a detrimental impact on the fair administration of justice, and we acted to remove it."

The Commission also promulgated an amendment responding to the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act. The amendment broadens the sentencing guideline for offenses involving individual rights to now specifically include the new hate crime offense, which makes it unlawful to willfully cause bodily injury to a person because of the person's race, color, religion, national origin, gender, sexual orientation, gender identity, or disability. The Hate Crimes Prevention Act also created a second new offense, making it unlawful to attack a United States serviceman on account of his or her service, and the Commission's amendment incorporates into the sentencing guidelines this new offense. The Commission also expanded the definition of a hate crime in its penalty enhancement for hate crimes to now include victims who were targeted because of their "gender identity."

Another amendment made various changes to the sentencing guidelines regarding the sentencing of organizations. Notably, the amendment provides encouragement (by means of potential sentence mitigation) for an organization to adopt a structure that assigns compliance and ethics officers direct reporting obligations to the governing authority of the organization. The amendment also clarifies the remediation efforts required of an effective compliance and ethics program. It describes the reasonable steps an organization should take to respond appropriately after criminal conduct is detected and to prevent further similar criminal conduct.

Any amendments made by the Commission to the guidelines must be submitted to Congress on or before May 1 of each year and become effective on November 1 if not disapproved by Congress.